

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION**

James Franklin Gilbert, III,)	
)	
Plaintiff,)	Civil Action No.: 5:16-cv-03395-JMC
)	
v.)	
)	
Cpt. Tucker,)	ORDER
)	
Defendant.)	
_____)	

This matter is before the court on review of the Magistrate Judge’s Report and Recommendation (“Report”) (ECF No. 53), filed on January 22, 2018, recommending that Plaintiff’s action be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute.

The Magistrate Judge’s Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(d) for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, which has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made. Fed. R. Civ. P. 72(b)(2)-(3).

The parties were advised of their right to file objections to the Report. (ECF No. 53 at 3), but neither party did.

In the absence of objections to the Magistrate Judge’s Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the

record in order to accept the recommendation.”” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (*quoting* Fed. R. Civ. P. 72 advisory committee’s note). Furthermore, failure to file specific written objections to the Report results in a party’s waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *see Wells v. Shriners Hosp.*, 109 F.3d 198, 200 (4th Cir. 1997) (“[t]he Supreme Court has authorized the waiver rule that we enforce. . . . ‘[A] court of appeals may adopt a rule conditioning appeal, when taken from a district court judgment that adopts a magistrate’s recommendation, upon the filing of objections with the district court identifying those issues on which further review is desired.’”) (citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)).

After a thorough review of the Report and the record in this case, the court finds the Report provides an accurate summary of the facts and law. Plaintiff did not respond to Captain Tucker’s Motion for Summary Judgment (ECF No. 46), and further, did not respond to the Magistrate Judge’s Order (ECF No. 50) directing him to advise the court whether he wished to continue with his case and to file a response to Captain Tucker’s Motion (ECF No. 46). For this reason, the court **ACCEPTS** the Report (ECF No. 53), **DISMISSING WITH PREJUDICE** Plaintiff’s Complaint (ECF No. 1) pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute. Captain Tucker’s Motion for Summary Judgment (ECF No. 46) is therefore **MOOT**.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

February 28, 2018
Columbia, South Carolina